

ENTERED

January 23, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALAA ELKHAFAGE,

Plaintiff,

VS.

DIRECTOR OF TDCJ CID LORIE DAVIS,

Defendant.

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CIVIL ACTION NO. H-19-03

**ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING THE RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING WITH PREJUDICE**

This court referred Alaa Elkhafage's 28 U.S.C. § 2254 petition for a writ of habeas corpus to Judge Christina Bryan for a report and recommendation under 28 U.S.C. § 636(b)(1)(B). Judge Bryan issued her report and recommendation on November 25, 2019, recommending that the court dismiss the claims with prejudice because they are barred by limitations. No objections were filed. After *de novo* review, the court adopts Judge Bryan's report recommending that this court grant the respondent's motion for summary judgment based on limitations, (Docket Entry No. 25), and deny the petition for habeas relief, with prejudice, as time barred.

The record amply supports Judge Bryan's recommended analysis and result. The one-year period from the date of the state court deadline to petition for discretionary review ended on March 10, 2009. Counsel filed Elkhafage's federal petition almost a decade later, on January 2, 2019. Neither statutory nor equitable tolling extends the deadline because Elkhafage did not seek state relief until after his federal limitations period expired and he did not diligently seek relief in state or federal court. Finally, his claim that new case law triggered a new federal habeas deadline is not supported by the law or facts.

The court grants the respondent's motion for summary judgment and dismisses this petition, with prejudice.

SIGNED on January 23, 2020, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'Lee H. Rosenthal', written over a horizontal line.

Lee H. Rosenthal
Chief United States District Judge